



DLA Piper LLP (US)  
500 Eighth Street, NW  
Washington, DC 20004  
www.dlapiper.com

William H. Minor  
william.minor@dlapiper.com  
T 202.799.4312  
F 202.799.5312

Digitally  
signed by  
Christal Dennis  
Date:  
2018.12.06  
20:06:28  
-05'00'

December 6, 2018

VIA E-MAIL TO CELA@FEC.GOV

Jeff S. Jordan, Esq.  
Assistant General Counsel  
Complaints Examination & Legal Administration  
Office of the General Counsel  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

Re: MUR 7508 / Whirlpool Corporation

Dear Mr. Jordan:

On behalf of our client the Whirlpool Corporation ("Whirlpool"), we write in response to the complaint filed on October 1, 2018 by Robert Secaur against Friends of Sherrod Brown, which was designated MUR 7508 by the Commission. Whirlpool previously submitted a Statement of Designation of Counsel, and we requested and received an extension to respond. Copies of those documents are attached.

Mr. Secaur's complaint alleges that Friends of Sherrod Brown, the principal campaign committee of Senator Sherrod Brown, accepted illegal and/or unreported corporate contributions, implying that Whirlpool made such contributions. Whirlpool denies this allegation, for which Mr. Secaur has provided only insinuation but no proof.

1. Background

The complaint concerns a 30-second campaign advertisement produced and distributed by Friends of Sherrod Brown. The advertisement references Whirlpool Corporation, which is a major employer in Senator Brown's home state of Ohio, employing 10,000 individuals at five manufacturing facilities in the state.

Friends of Sherrod Brown filmed the advertisement in Clyde, Ohio, a town of approximately 6,200 people in Sandusky County. Whirlpool maintains a 2.4 million-square-foot facility in Clyde where 3,000 workers manufacture washing machines. The facility appears in the background in portions of the advertisement. Friends of Sherrod Brown also included in the advertisement brief comments by four individuals. None are identified explicitly as Whirlpool employees in the advertisement, but one woman is wearing a shirt with the Whirlpool logo, and she says during the commercial: "We make washing machines."



Jeff S. Jordan, Esq.  
Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
December 6, 2018  
Page Two

## 2. Legal Analysis

Mr. Secaur's complaint alleges that because the advertisement contained "corporate logos and resources," it amounts to a corporate contribution. He argues that the campaign's use of the Whirlpool trademark constitutes an impermissible in-kind contribution from a prohibited source. We believe that Mr. Secaur misrepresents the facts and misconstrues the law in his complaint.

First, with respect to the corporate signage in front of the Whirlpool facility, we would note that Friends of Sherrod Brown filmed the commercial on the sidewalk – public property – outside of the Clyde facility, as is evident in the advertisement itself. Whirlpool informed the campaign that it could not film on corporate property, consistent with Whirlpool policies. The inclusion of the company's sign in the Friends of Sherrod Brown advertisement was entirely the campaign's choice and no different from the numerous commercials filmed every election by a wide variety of campaigns in front of recognizable locations and businesses without resulting in any contribution.

Second, with respect to the company logo on clothing, we would note that only one of the individuals who appears in the advertisement is wearing a shirt with the Whirlpool logo, contrary to Mr. Secaur's complaint. Moreover, the individuals in the advertisement are Whirlpool employees but participated in the advertisement as a personal matter, not at the direction of the company. These individuals were exercising their own First Amendment rights using personal, uncompensated time during a day off work. Their choice of attire was also their own.

In arguing that the appearance of the corporate name and logo in the advertisement amounts to a corporate contribution, Mr. Secaur cites the Commission's Advisory Opinion 2007-10. However, that opinion reached a far narrower conclusion that is very different in significant ways. While the Commission recognized that corporate names, trademarks, and service marks are corporate resources, the opinion turned on the use of those marks *by the corporation* to facilitate the making of contributions to a federal committee. The proposal under consideration in Advisory Opinion 2007-10 involved corporations voluntarily allowing their marks to be used by a federal campaign in fundraising. "By allowing the committee to use the corporation's resources – in effect, by lending the corporation's resources to the committee – the corporation is using its resources to facilitate contributions," the Commission wrote.

In this instance, Whirlpool in no way offered or allowed Friends of Sherrod Brown to use the Whirlpool name and logo. The campaign filmed its advertisement on public property with the sign in view, just as anyone would be able to do. And the employee who, as a volunteer

16044476920



Jeff S. Jordan, Esq.  
Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
December 6, 2018  
Page Three

participating in the advertisement on her time, wore her own shirt with a Whirlpool logo on it likewise did so of her own volition.

The Federal Election Campaign Act ("the Act") and the Commission's regulations prohibit corporate contributions and define "contribution" broadly, to include "anything of value." However, to be a contribution, something of value must be *provided* to a candidate or committee. The regulation cited by Mr. Secaur explains that "the *provision* of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution." 11 C.F.R. § 100.52(d)(1) (emphasis added). Whirlpool did not provide its name or marks to be used in this advertisement, and without such provision, there can be no contribution.

The Friends of Sherrod Brown advertisement is more closely comparable to the two other opinions cited by the Commission in Advisory Opinion 2007-10. In both Advisory Opinions 1984-43 and 1978-77, the Commission approved proposals for a corporate employee to appear in a campaign advertisement in support of a federal candidate, including the use of the corporate name of the employer, provided the employee volunteered his or her time. The Commission concluded, in Advisory Opinion 1984-43: "where, as here, no corporate endorsement has been made, a statement that merely identifies [the employee] as a corporate official would not implicate the company in a prohibited contribution or expenditure."

Finally, we would note that, in an abundance of caution, Whirlpool took steps after the advertisement was released by Friends of Sherrod Brown to clarify that Whirlpool had made no endorsement in this or any other federal election. Whirlpool contacted the campaign and asked that a disclaimer be added to the advertisement, as Mr. Secaur acknowledges in his complaint. Friends of Sherrod Brown inserted a prominent caption in the first segment of the advertisement, in a size and font that appear identical to those used for the mandated disclaimers, stating: "This ad does not constitute an endorsement of Whirlpool Corporation." Whirlpool further provided statements to the media at the time confirming that there had been no endorsement by the company.

### 3. Conclusion

As outlined herein, we do not believe that Mr. Secaur's complaint alleges a violation of the Act. The inclusion by Friends of Sherrod Brown in its advertisement of images of the Whirlpool name and logo, whether on a sign outside a building or on an individual's t-shirt, does not amount to a contribution by Whirlpool. We therefore urge that the Commission find no

10044476421



**Jeff S. Jordan, Esq.**  
**Assistant General Counsel**  
**Complaints Examination & Legal Administration**  
**Federal Election Commission**  
**December 6, 2018**  
**Page Four**

reason to believe that a violation has occurred and close the file on this matter. Should you have any additional questions, please do not hesitate to contact us.

**Respectfully submitted,**

**DLA Riper LLP (US)**

Chrislin

**William H. Minor**  
**Partner**

**Counsel to Whirlpool Corporation**

**Attachments:**